

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

JOSEPH MICHAEL GRATE, #324444,

Petitioner,

v.

CIVIL ACTION NO. 2:07cv20

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's convictions on January 7, 2004, in the Circuit Court of the City of Norfolk for first-degree murder and use of a firearm in the commission of a felony. Petitioner was sentenced to serve twenty-three (23) years in prison for first-degree murder and three (3) years in prison for use of a firearm in the commission of a felony.

The matter was referred to a United States Magistrate Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, for report and recommendation. The report of the Magistrate Judge recommending dismissal of the petition was filed on September 27, 2007. By copy of the report, each party was advised of his right to file written objections to the findings and

recommendations made by the Magistrate Judge. The Court has received no objections to the Magistrate Judge's Report and Recommendation, and the time for filing same has expired.

The Court hereby ADOPTS the findings and recommendations set forth in the report of the United States Magistrate Judge filed on September 27, 2007, and it is, therefore, ORDERED that the petition be DENIED and DISMISSED WITH PREJUDICE and that judgment be entered in favor of Respondent.

Accordingly, the Court FINDS that the claims set forth in the instant petition are time-barred and procedurally barred before this Court.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Order to Petitioner and to counsel of record for Respondent.

/s/

Jerome B. Friedman  
United States District Judge

Norfolk, Virginia

October 17, 2007